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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.2390 of 2007

Rahje Vijaysinh Dafale Shetkari
Sahakari Sakhar Karkhana Ltd. & Ors..Petitioners

Vs.

Regional Deputy Director (Sugar)
and Joint Registrar, Co-op. Societies
Kolhapur & Ors. ...Respondents

Mr. G.S. Godbole, for the Petitioners.
Mr. A.H. Palekar, AGP for respondent Nos. 1 to 3.
Mr. Amit Borkar for respodnent No.5.
Mr. Y.S. Jahagirdar, Senior Advocate with Mr. A.M. Kulkarni, for respondent No.4.

WITH

WRIT PETITION NO.2399 OF 2007

Rajarambapu Patil Sahakari
Sakhar Karkhana Ltd. & Ors... Petitioners

Vs.

Regional Deputy Director (Sugar)
and Joint Registrar, Co-op. Societies
Kolhapur & Ors. ...Respondents

Mr. Y.S. Jahagirdar, Senior Advocate with Mr. A.M. Kulkarni, for the petitioners
Mr. G.S. Godbole, for Respondent No.4.
Mr. A.H. Palekar, AGP for respondent Nos. 1 to 3.
Mr. Amit Borkar for respodnent No.5.

CORAM : F.I. REBELLO &
R.M.SAVANT, JJ.
DATED : 5TH APRIL, 2007.

P.C.

. The petitioners in Writ Petition No.2390 of 2007 is the society in respect of which the order came to be passed appointing an Administrator.Petitioner Nos. 2 to 4 were the erstwhile members of the Board of Directors.

2. The petitioner in Writ Petition No.2399 of 2007 is

holding the lease in respect of the factory whose possession was taken by the Maharashtra State Co-operative Bank pursuant to a notice served under Section 13(4) of the Securitization Act.

3. Before we decide the controversy a few dates may be given. A notice under Section 78 of the Maharashtra Co-operative Societies Act was served on the petitioner in Writ Petition No.2390 of 2007 on 13th March, 2006. On 18th July, 2006 the Collector was pleased to issue a notification declaring that the date for election. On 29th July, 2006 the Regional Joint Director of Sugar noted by an order that as the election programme had been announced there was no need to proceed with the notice served under Section 78 of the M.C.S. Act. Inspite of the order of 29th July, 2006 a fresh direction was issued by respondent No.3 to respondent No.1 on 10th August, 2006 for earlier decision under Section 78 of the M.C.S. Act. On 16th August, 2006 it appears that without giving any fresh notice to the society and its Directors an Administrator came to be appointed. It further appears that decision had been taken by the Collector to proceed with the elections on 17th July, 2006 though the actual notification showing the programme for election was issued in 18th August, 2006.

3. During this period a notice came to be served on the society by the Apex Co-operative Bank for recovery of its dues on 31st May, 2006 under Section 13(2) of the Securitization Act. On 14th August, 2006 the Apex Co-operative Bank took possession of the sugar factory and

thereafter a Tripartite Agreement came to be entered into between the sugar factory whose possession was taken over, the Apex Co-operative Bank, who has taken possession and another party who took on lease of the said sugar factory. By the present petition what is being challenged is the appointment of Administrator. Once the respondent No.1 on 29th July, 2006 had arrived at a conclusion that in view of the programme for election is announced there was no need to proceed under Section 78 of the M.C.S. Act and thereafter even if respondent No.3 had issued any direction the respondent No.1 was bound to give notice to the bank and Directors before an Administrator could be appointed. No such opportunity was given. Under these circumstances in our opinion the impugned order which has civil effects will have to be set aside as there is violation of principles of natural justice and fair play. In the light of that Rule made absolute in terms of prayer clause (b) in both the petitions. There shall be no order as to costs. We may it clear that we have not decided the matter on merits, but only on the ground of failure to give opportunity. It will be open to the respondent No.1, if so advised, to take steps which in law he will be entitled to. We make it clear that if the respondent No.1 proceeds to take any action considering that the interest of the petitioner in Writ Petition No.2399 of 2007 notice should also be given to the said petitioners.

(**F.I.REBELLO**, J)

(**R.M. SAVANT,J)**